The Solicitors' Journal

Vol. 94 January 7, 1950 No. 1

1950 AND OURSELVES

THE New Year is traditionally the time for renewal and reaffirmation of purpose, no less with newspapers than with individuals. And so, entering upon the 94th year of its existence, THE SOLICITORS' JOURNAL couples with its New Year greetings to readers an assurance that—despite some changes in appearance—it will continue in 1950 to serve their interests in every way possible.

Attired in a more attractive cover and printed in a somewhat larger type, the journal's principal contents and arrangement nevertheless remain unaltered. The layout of the table of contents has, however, been improved in order to facilitate reference to back issues before completion of the volume enables them to be bound. And although this change has been effected at some cost in symmetry, its practical advantages are obvious.

Certain new features are planned, among them one which we believe will prove of particular interest, namely, a commentary on matters of conveyancing practice as seen through a solicitor's eyes, appearing from time to time over the initials " J. G. S." Principle and practice will thus be served by the complementary nature of the " Conveyancer's Diary " and the new series of articles.

In response to a number of requests, arrangements have been made for the inclusion at monthly intervals of a cumulative table of cases reported in " Notes of Cases," and a parallel table of principal articles will appear at similar intervals. These tables will be published in the second and fourth week of each month respectively.

The second half of 1950 will see the realisation, regrettably only in part, of the great Legal Aid and Advice Scheme. Its success will depend very largely on the co-operation and goodwill of solicitors everywhere, and we shall continue to describe and comment as fully as possible on the evolution of the details of the scheme as they become available.

Two years ago at this time we invited readers to let us know what features in THE SOLICITORS' JOURNAL appealed to them most, and what, if any, additional features they would like to see included in it. There was an encouraging response to this invitation and a number of valuable suggestions then made have since been put into effect. Since that time, however, many new readers have been added and it is appropriate to repeat that invitation. If the journal is to fulfil its object of supplying what the reader wants, it must first know what the reader wants. And only the reader can answer that question.

CONTENTS

CURRENT TOPICS

New Rules of Court

THE Rules of the Supreme Court (No. 3), 1949 (S.I. 1949 No. 2399), come into force on 11th January. Their principal provision is a new order, Ord. 54P, which lays down the procedure for applications to make an infant a ward of court in pursuance of s. 9 of the Law Reform (Miscellaneous Provisions) Act, 1949 (which, it may be recalled, provides that no infant shall be made a ward of court except by virtue of an order to that effect made by the court, but that on an application for such an order the infant shall become a ward of court for a period to be prescribed by rules but shall then cease to be such unless an order has meanwhile been made in accordance with the application). The new Ord. 54P prescribes twenty-one days as the relevant period, and provides for notification to be given to the Chief Master's office of the issue of a summons in respect of the application, and, in appropriate cases, of the expiration of the twenty-one days without an appointment having been obtained for the hearing of the summons. These notifications will then be recorded in the Register of Wards. The R.S.C. (No. 3), 1949, also amend Ord. 36, r. 22B (relating to entry for trial at assizes), by substituting fourteen days for seven days as the minimum period before commission day for setting down for trial. Another amendment replaces the existing Ord. 36, r. 47C, by a new rule relating to the transfer of business from one official referee to another.

Venue for Civil Proceedings before Magistrates

SOME months ago we published (93 SOL. J. 207) an article under the above heading summarising the provisions as to venue in summary proceedings. Our contributor now draws attention to the fact that two amendments of the law affecting venue in magistrates' courts were made in December, 1949: First, proceedings for an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, may now be taken not only where the cause of complaint wholly or partially arose or where the husband was summarily convicted of aggravated assault, but also where the wife or the husband ordinarily resides. This extension of venue to the place of residence is made by s. 6 of the Married Women (Maintenance) Act, 1949. Secondly, an application for an adoption order must now be made to the juvenile court for the place where the applicant resides. The juvenile court for the place where the infant resides (if a different court) no longer has jurisdiction. This amendment is made by r. 1 of the Adoption of Children (Summary Jurisdiction) Rules, 1949 (S.I. 1949 No. 2397).

The Development Charge

IN a statement published on 23rd December the Town and Country Planning Association criticised the fixing of the development charge at 100 per cent. of assessed development value and stated that it leaves an owner no economic incentive to dispose of land for development. The statement added that the official hope that land would change hands freely at existing use value has not been fulfilled. It continued: "In the different but analogous proposals of the Uthwatt Report and the White Paper of 1944, charges up to 75 to 80 per cent. were proposed. No definite percentage was laid down in the Act. When the point was debated in Parliament it was agreed by both sides of the House that a variable percentage would enable development to be stimulated or discouraged as desired. The association considers that the regulations should be amended so that some part of the development value is retained by the disposing or developing owner. To restore to this extent the incentive to develop would be better than to rely on the threat of compulsory purchase, which should only be necessary in unusual cases."

Adoption of Children: New Rules

IN consequence of the passing of the Adoption of Children Act, 1949, new rules have been made regulating applications for adoption orders in the county courts and courts of summary jurisdiction, which came into force on 1st January, 1950. They are the Adoption of Children (County Court) Rules, 1949 (S.I. 1949 No. 2396), and the Adoption of Children (Summary Jurisdiction) Rules, 1949 (S.I. 1949 No. 2397). New forms are prescribed for applications and consents, etc., and the previous rules are revoked except as regards applications pending on 1st January, 1950. We hope to publish an article in an early issue describing the effect of the new Act and rules.

Relaxation of Exchange Control

EMIGRANTS from the United Kingdom to O.E.E.C. countries other than Belgium, Switzerland and Luxembourg, on and after 1st January, 1950, are to be allowed to take out up to £5,000 of their capital, spread over four years, instead of £1,000, the amount previously allowed. This will also apply to foreign nationals leaving the United Kingdom to take up permanent residence in any of these countries, even if the country to which they are going is not their original domicile. Non-residents working temporarily in the United Kingdom will be allowed to remit to their home countries as much as they can save out of their earnings, instead of the present maximum of 50 per cent. More liberal treatment is promised to applications by private individuals to remit money for compassionate purposes to relatives or dependants. The countries concerned are France, Italy, the Netherlands, Western Germany, Portugal, Denmark, Sweden, Norway, Iceland, Greece, Turkey, Austria and Eire. A relaxation applicable to all countries is also announced as operating from 1st January, 1950. Where, in future, capital enters the United Kingdom for approved investment projects, instead of being blocked in this country for at least ten years, as previously, it will be permitted to take it out again at any time up to the amount of the original investment.

Recent Decision

In *In re Earl Fitzwilliam's Agreement; Peacock* v. *Inland Revenue Commissioners*, on 21st December (*The Times*, 22nd December), DANCKWERTS, J., held that estate duty was not leviable on an arrangement by Earl Fitzwilliam to purchase from trustees of a settlement made on the occasion of his son's marriage, in which settlement the earl had no interest, an annuity of £50,000 for his life, for the sum of £375,000, being 7½ years' purchase, which sum was found by the transfer to the trustees of certain property to which the seventh earl was absolutely entitled. His lordship held that estate duty was not leviable under s. 2 (1) (*c*) of the Finance Act, 1894, incorporating s. 38 of the Customs and Inland Revenue Act, 1881, as being property deemed to pass by a disposition *inter vivos* under a voluntary settlement and that the removal of the words "voluntary" and "voluntarily" by s. 2 (1) (*c*) of the Finance Act, 1894, from the former provisions of the Customs and Inland Revenue Acts, 1881 and 1889, did not bring transactions for full monetary consideration within s. 2 (1) (*c*) of the 1894 Act.

"**In Witness** whereof these presents have been entered into the day and year first above written."

The end of an Agreement, but it may signify the beginning of a new era of expansion and development for a business if the Agreement provides for the subscription of additional capital.

Many small businesses have increased output by making the best use of existing equipment, but permanent extensions to buildings and plant may be needed for further growth. Scope for profitable development may exist, but the programme calls for additional finance beyond the resources of the business and its proprietors. It is in such circumstances that the Charterhouse Industrial Development Company Limited, formed in 1934 for the express purpose of providing capital to assist the expansion of smaller established businesses, can help.

Larger businesses in need of more substantial sums can obtain their capital by public subscription; a public issue of capital is an intricate operation, requiring the expert advice of an Issuing House. The Charterhouse Finance Corporation Limited specialises in issues for manufacturing and distributive industries.

The Charterhouse Group welcomes enquiries for the raising of large or small amounts of capital and has published a Booklet, which will be sent free on application, describing the services which it offers. The necessary negotiations may be conducted with or through the applicant's solicitors, and it is the established policy of the Group not to disturb existing professional relationships.

THE CHARTERHOUSE FINANCE CORPORATION LIMITED

CHARTERHOUSE INDUSTRIAL DEVELOPMENT COMPANY LIMITED

CONTROLLED BY

THE CHARTERHOUSE INVESTMENT TRUST LIMITED

15, St. Swithin's Lane, London, E.C.4

CENtral **0454**

HENRY BUTCHER & CO.

●

AUCTIONEERS

SURVEYORS and VALUERS

OF

MANUFACTURING PROPERTY

AND

PLANT and MACHINERY

FACTORY AGENTS

●

73 CHANCERY LANE, LONDON, W.C.2

Telephone: HOLborn 8411 (8 lines)

What of the Future?

—AND THOSE WHO COME AFTER ?

LEGACIES can help us to continue our work in the years to come—for fatherless and ill-treated children—and victims of broken homes

5,000 NOW IN OUR CARE

Will you please advise your clients ?

CHURCH OF ENGLAND

CHILDREN'S SOCIETY

Formerly WAIFS & STRAYS

Bequests should be made to the Church of England Children's Society (formerly Waifs & Strays)

OLD TOWN HALL, KENNINGTON, S.E.11

Bankers: Barclays Ltd., Kennington, S.E.11

A VOLUNTARY SOCIETY · NOT STATE SUPPORTED

THE MARRIED WOMEN (MAINTENANCE) ACT, 1949

THIS Act received the Royal Assent on the 16th December, 1949, and came into force forthwith (see 93 SOL. J. 796). It received little publicity in the Press, and in spite of the importance of its provisions to the practitioner it is probable that many solicitors are as yet unaware of its effect, especially as printed copies of it have only this week become available from H.M Stationery Office.

Probably the most important of its provisions is contained in s. 1, which increases the maximum amounts which may be awarded under a maintenance order from £2 to £5 in respect of the wife, and from 10s. to 30s. in respect of each child. This amendment is effected in the Act by substituting the new maxima for the old in s. 5 (*c*) and s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, and in s. 1 of the Married Women (Maintenance) Act, 1920. Existing orders under the old Acts may be varied within the limits of the new maxima, but any increases so ordered will, of course, take effect only as from the date of the varying order, and cannot be given retrospective effect.

The new maximum payments do not, however, apply to orders made under s. 5 (2) of the Licensing Act, 1902; that section, it will be remembered, enables an application for an order to be made by a married man whose wife is a habitual drunkard; the order may provide for non-cohabitation, custody of the children, payment of maintenance by the husband, and costs. Not unreasonably, the Legislature has not seen fit to increase the amount which a husband may be ordered to pay for the support of his wife whose excessive drinking is the cause of the failure of the marriage.

Section 2 of the new Act confers upon the court an entirely new power. Under the 1920 Act, orders for maintenance of children can only be made until they attain the age of sixteen. The new section, however, enables such an order to be varied where the child is or will be engaged in a course of education or training after attaining that age, by continuing the payments for such period after the child is sixteen as may be specified in the order, not exceeding two years from the date of the order; subsequent variations may be made from time to time up to the age of twenty-one years.

Pausing here for a moment, it should be pointed out that these extended payments can, apparently, only be ordered by way of variation of an existing order for the maintenance of the child. It appears, therefore, that a married woman who first obtained an order against her husband at a time when her child was already sixteen years of age or more, cannot apply under the new section for extended payments, for the simple reason that there is no existing order providing for maintenance of the child which could be varied by the court. Similarly, if, when the wife applies for her original order, the child is, say, fifteen years eleven months old, the order for maintenance of the child must in the first instance be limited to continue only until the child attains sixteen, and extended payments beyond that age can only be ordered by variation of the original order, and not in the original order itself. It may be, however, that if both parties are before the court a summons to vary could be applied for then and there and made returnable forthwith, though such a procedure seems, to say the least of it, to be a clumsy method of ordering extended payments which, with a little imagination on the part of the draftsman of the Act, might well have been more appropriately covered under the section itself.

Whether the limitation of the power granted by the section to varying orders is accidental or by design is not for the writer to say, but from a practical point of view it would certainly seem that injustice may well result in some cases.

Payments made up to the new maxima are to be made without deduction of tax; this is effected by s. 3 of the new Act, which extends the provisions of s. 25 of the Finance Act, 1944, by substituting the new maxima for the old in the definition of "small maintenance payments," and increases the limit of age from sixteen to twenty-one years in order to include extended payments under s. 2 of the 1949 Act.

Some women who have obtained orders against their husbands under the Summary Jurisdiction (Married Women) Act, 1895, or under s. 5 of the Licensing Act, 1902, are dilatory about the enforcement of payment of arrears. Consequently, it not infrequently happens that arrears are allowed to attain considerable proportions before any attempt is made to enforce payment, with the result that the husband may find himself so heavily in debt that he has little or no chance of extricating himself. Many courts have, in such circumstances, met the situation by remitting a substantial part of the arrears and making a committal order suspended on payment of the current amounts as they fall due with some small additional payment each week in reduction of the unremitted balance of the arrears, but in order to try to keep the arrears from accumulating to too high a figure the new Act requires the collecting officer, where a maintenance order is payable to or through him, to notify the married woman in writing as soon as the payments are the equivalent of four weeks in arrear. The collecting officer is, however, given a fairly wide discretion in the matter, since he need not send the notice if he considers it unnecessary or inexpedient, by reason of special circumstances, to do so. Examples of such special circumstances would, it is suggested, include cases where the husband is ill or unemployed and consequently no good purpose would be likely to be served by taking steps to bring him before the court with a view to collecting the arrears.

If, on receipt of the notice or otherwise, the married woman asks the collecting officer to proceed in his own name for the recovery of the arrears, he must do so unless he considers it unreasonable in the circumstances, the illness or unemployment of the husband might well be considered, in this case also, as an appropriate reason for the collecting officer to decline to act. If the collecting officer proceeds as requested by the married woman, she will be liable for the proper costs of the proceedings to the same extent as if she had taken the proceedings in her own name.

There is no doubt that these extra duties cast upon the collecting officer will involve him in a vast amount of extra work. The writer is himself a collecting officer in a petty sessional division in which there are some 1,500 maintenance orders upon the books, and each one of these accounts will have to be carefully watched so as to make sure that the requisite notices are sent out as soon as the arrears total the equivalent of four times the weekly payments; furthermore, a large number of applications to vary existing orders by increasing them within the new maximum limits is, of course, to be expected, as well as an influx of applications from persons within a higher income group then those who have hitherto been accustomed to seek relief through the summary courts, and it is likely that many courts will have to increase their staffs in order to cope with the extra work.

However, the new provisions are in keeping with the general tendency to extend the scope of the magistrates' courts, and should prove to be of advantage to the general public and welcomed by the legal profession.

Lastly, the new Act carries out two amendments of the law which most practising solicitors will agree are long overdue; s. 5 enables an order for custody of children made under s. 5 of the Act of 1895, or s. 5 of the Licensing Act, 1902, to include provision for access by the party who is not granted the custody; and s. 6 enables proceedings under the Act of 1895 to be taken in the court having jurisdiction where either of the parties ordinarily resides, as well as the court where the cause of the complaint arose. Hitherto, where an order for access to the children was required, it has been necessary for a summons to be issued under the Guardianship of Infants Act, 1925; and inconvenience has been occasioned, frequently to both parties, where the ground of the complaint has been the adultery of the defendant and it has been necessary to take proceedings in the court having jurisdiction where the adultery took place, which may well be far removed from the place where the parties themselves reside.

That the new Act will fulfil a useful function, and go far towards extending the cheap and speedy procedure of the magistrates' courts to persons within an income group which has not hitherto been adequately assisted by the previous law, is beyond question; but it is none the less surprising that the Legislature has not taken advantage of the opportunity to bring certain other matters into line with the new provisions. For instance, it would have been simple to increase the maximum payments which may be ordered under the Guardianship of Infants Acts to 30s. a week for each child; and the payments under the Bastardy Acts might well have been similarly increased. But for some reason which is not clear, at any rate to the writer, the maximum payments in both cases have been left at 20s. a week, though it is not easy to see why the cost of maintaining and educating an illegitimate child, or one not included in a "married woman order" should be less than that relating to a child included in such an order, or why, if the cost is the same, the man responsible should be more favourably treated. Similarly, the power to extend the operation of a "married woman order" beyond the time when the child attains the age of sixteen years, which is contained in s. 2 of the new Act and has been dealt with earlier in this article, does not apply to bastardy orders, though there appears to be no adequate reason why a child who is included in such an order should be less favourably treated than any other. One wonders whether such children were purposely excluded, or whether this is an example of a statute being rushed through without sufficient thought being given to its possible implications.

E. G. B. T.

CIVIL RIGHT FOR BREACH OF STATUTORY DUTY

THE question whether an Act of Parliament which imposes a duty upon any person and provides penalties for the breach thereof gives rise also to a right of civil action at the suit of a person injured by the breach has come before the courts on very many occasions and in widely differing circumstances. It cannot be said that *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398, decided by the House of Lords last February, is likely to be the last word on the subject, for that case was decided, as has been every other in the books, upon the construction of the particular Act of Parliament. It does, however, go some way towards establishing upon what principles, in the absence of clear words, the Act must be read; and these principles, although far from new (see an article at 91 SOL. J. 345), had not been followed consistently in the earlier cases.

Cutler v. *Wandsworth Stadium* was concerned with an action brought by a bookmaker against the occupiers of a dog track for breach of a section of the Betting and Lotteries Act, 1934. That section—11 (2)—required that where a totalisator was in operation on a dog track bookmakers as such should not be excluded, and adequate accommodation should be provided for them; and penalties of fine and imprisonment were contained in later sections of the Act. The House of Lords held that there was no cause of action. The principles which they applied may be seen by looking first at the speech of Lord du Parcq. After approving Stephen, J.'s observation in *Vallance* v. *Falle* (1884), 13 Q.B.D. 109, that "the best way of finding out the meaning of a statute is to read it and see what it means" Lord du Parcq elicits from authority "principles which have been found to afford some guidance" as to the intention of Parliament; and in particular he applies the "general rule" laid down by Lord Tenterden, C.J., in *Doe* v. *Bridges* (1831), 1 B. & Ad. 847, that "where an Act creates an obligation, and enforces the performance in a specified manner . . . that performance cannot be enforced in any other manner." He admits exceptions to the "general rule" where they are established by "the scope and language of the Act" or "considerations of public policy and convenience" (phrases used by Lord Macnaghten in *Pasmore* v. *Oswaldtwistle U.D.C.* [1898] A.C. 387); and he approves the judgment (referred to below) of Bankes, L.J., in *Phillips* v. *Britannia Hygienic Laundry Co.* [1923] 2 K.B. 832; from these premises he concludes (but is the only member of the House to do so) that in an Act passed subsequently to the decisions mentioned a right of civil action cannot be inferred without clear words. For guidance upon the meaning of Lord Macnaghten's words one has to look further.

The speeches of all the other law lords were directed principally to whether it was the intention of the Act to "benefit" bookmakers as a class (which they decided in the negative); and the apparent *lacuna* in the argument seems to be filled by the approval given, as already mentioned, to Bankes, L.J.'s judgment in *Phillips'* case. That case concerned damage caused to a van by reason of the faulty condition of another vehicle, such condition constituting a breach of the Motor Cars (Use and Construction) Order, 1904. It was held that no right of civil action lay, and the *ratio decidendi* adopted by McCardie, J., in the Divisional Court and by Bankes, L.J., in the Court of Appeal was (in paraphrase) that an exception to Lord Tenterden's "general rule" is within the "scope and language" of a statute where the statute is intended to benefit an individual or described class of the public, but that a duty imposed for the benefit of the public *at large* (the only benefit in that case) can be enforced only by the penalty provided. It is perhaps unfortunate that the House of Lords in *Cutler* did not take the opportunity of stating this rule of law (if it is one) explicitly, the more so since *Phillips* is for two reasons an unsatisfactory case: firstly because Atkin, L.J., though coming to the same conclusion, did not subscribe to the reasoning of his brother Bankes, and secondly on account of the difficulty of reconciling that reasoning with the decision in the later case of *Monk* v. *Warbey* [1935] 1 K.B. 75. *Monk*

v. *Warbey* is the well-known case in which breach of the obligation of a car owner to take out third party insurance was held to found a civil action for damages brought by a person injured through the negligent driving of someone other than the owner. It was not suggested in that case that there was any difference of substance between it and *Phillips*, but the statute was construed in accordance with the broad view expressed by Atkin, L.J., in the earlier case that, having regard to the scope and wording of the Act, " it may still be that, though the statute creates the duty and provides a penalty, the duty is nevertheless owed to individuals." Indeed, Greer, L.J., went so far as to say that " it does not seem logical to say that unless you can find in the Act provisions specifically intended for the benefit of an individual or described class of persons no action will lie . . ."

Nevertheless it seems clear that the House of Lords has in fact accepted the reasoning applied by Bankes, L.J., and that this is now the law. They emphasised, moreover, that it is not sufficient that the *effect* of the statute is to benefit a class but that it must be shown to have been the *intention* of the Legislature to do so.

The only references in the House of Lords to any other means by which Parliament's intention may be tested are to be found in the speeches of Lord Simonds and of Lord Normand. Lord Simonds admits that the adequacy of the penalty may be a relevant consideration " in such cases as *Groves* v. *Wimborne*." *Groves* v. *Wimborne* [1898] 2 Q.B. 402 concerned the statutory duty of an employer to provide safety precautions in a factory: A. L. Smith, L.J., said in the course of his judgment that the penalty was intended as a punishment and not as compensation to the injured workman or his family, so that " it cannot have been the intention of the Legislature that the provision which imposes upon the employer a fine as a punishment . . . should take away the *prima facie* right of the workman to be fully compensated." It seems, however, probable that this argument would not be applied except to cases where, as in *Groves* v. *Wimborne*, " benefit to a class " is already shown; and if this is so the inquiry is taken no further.

Lord Normand, on the other hand, suggests a means of ascertaining Parliament's intention which opens up wider fields. He argues that although not all of the duties imposed by the Betting and Lotteries Act are such that bookmakers, or any other class of persons, have an interest in enforcing them, yet a single scale of penalties is imposed: " it is fair to infer that that particular duty was not intended to have the additional sanction of civil liability." This is an argument similar to that used by Lord Cairns, L.C., in *Groves* v. *Wimborne*, where of four separate duties two expressly created a civil liability and the other two did not.

From this it appears, if indeed it were not clear already, that it is not intended that " benefit to a class " shall be the only consideration in construing a statute, but that all the ordinary canons apply. It is this circumstance which leads to the conclusion that there will be no end to litigation upon this question unless and until Parliament accepts the advice of Lord du Parcq and abandons its " traditional legislative reticence " as to the liabilities it intends to create.

None the less, *Cutler's* case is important, for it finally establishes Lord Tenterden's " general rule " and therefore by implication disapproves the judicial *dicta* in which the rule was put the other way. Holt, C.J. (quoted in Comyn's Digest), had said: " In every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law "; A. L. Smith, L.J., followed this in *Groves* v. *Wimborne* by saying that " on proof of a breach of a statutory duty imposed on the defendant and injury resulting to the plaintiff therefrom, *prima facie* the plaintiff has a good cause of action " and that recourse must be had to the " purview " of the particular Act to establish that the right was intended to be excluded; and Greer, L.J., adopted this language in *Monk* v. *Warbey*. It can clearly no longer be accepted. While on its facts *Groves* v. *Wimborne* was no doubt in any case rightly decided, it is difficult to escape the conclusion that *Monk* v. *Warbey* ought not now to be followed. It was formerly possible to argue (as did Slesser, L.J., in *Square* v. *Model Farm Dairies* [1939] 2 K.B. 365) that a distinction ought to be drawn between a statute which only reinforces a common law duty by imposing a penalty for its breach (where the civil action would lie) and one which imposes a duty not previously existing at common law (where it would not): *Monk* v. *Warbey* was in the former category and *Phillips* in the latter. But this distinction, if it were still valid, would be so fundamental that the absence of any reference to it in *Cutler* suggests that it cannot be accepted.

A. L. P.

Costs

DISBURSEMENTS—I

SEVERAL points arise out of our recent consideration of the provisions of the General Order, 1882, with regard to the remuneration of solicitors in conveyancing matters, and we now propose to deal at greater length with a few of these points.

In the first place, we have seen that the scale remuneration under Sched. I is not to include any disbursements necessarily and properly laid out in connection with the business. The scale fee will, however, include " law stationers' charges and allowances for time of the solicitor and his clerks and for copying and parchment, and all other similar disbursements," see Ord. 4 of the General Order, 1882. The same principle will apply also to remuneration in respect of registered land, for Ord. 1 (*j*) of the Solicitors' Remuneration (Registered Land) Order, 1925, provides that Ord. 4, *supra*, shall apply to registered land.

The provisions of Ord. 4, *supra*, are reasonably clear. If a solicitor has a deed of conveyance which he requires to be engrossed and he has insufficient staff to do this in his own office and employs a stationer to do it for him, then he cannot charge the stationer's charges in addition to the scale fee. The stationer here is in the nature of an employee, detached from the office, and his charges for copying the deed are similar in character to the wages of the solicitor's own staff.

The purchaser's solicitor, on a sale of freehold or leasehold property, is entitled to a copy of the abstract of title, and the charge for copying this is included in the scale fee. Where the sale goes off and the solicitor's charges are made up according to Sched. II then he will charge 3s. 4d. per brief sheet of eight folios for copying the abstract. In point of fact, it is frequently the practice to fair copy the abstract direct from the deeds, with the result that the purchaser's solicitor receives what is, in effect, the draft. Be this as it may, in the event of Sched. II charges being made, the solicitor supplying the abstract will be entitled to charge for drawing the document

at the rate of 6s. 8d. per sheet of eight folios, and also at 3s. 4d. per brief sheet for copying it; a total charge of 10s. per brief sheet, notwithstanding that the draft and the copy are one and the same document.

We cannot leave this aspect of the matter without referring to the subject of plans. Whether or not the cost of copying these is a proper disbursement to be charged in addition to the scale fee has, on many occasions, been a bone of contention. However, there seems to be no doubt that the cost of making ordinary plans to accompany a conveyance must be deemed to come within the meaning of the term "stationer's charges," where the plans are simple tracings and are done outside the solicitor's office. This principle was confirmed in the case of *Re Read* [1894] 3 Ch. 238.

The cost of making more elaborate and complicated plans, however, particularly where it is necessary to employ an architect or other expert to make them, would not seem to come within the order, and the cost of making such plans would appear to be a proper disbursement to be charged in addition to the scale fee. Moreover, where a plan has to be prepared to accompany an abstract of title, this will also be covered by the scale fee, except again where the plan is elaborate and complicated.

So much then for stationers' charges. The reason that no charge can be made for either the solicitor's or his clerks' time, in addition to the scale fee, is so obvious as to warrant no further comment. Now, what is intended to be covered by the general words "all other similar disbursements"? It is clearly intended to include all disbursements akin to stationers' charges, or the cost of the solicitor's or his clerks' time. In short, it is intended to cover any expense which is laid out on work the remuneration for which is covered by the scale fees. This obviously applies to the cost of paper, etc., used.

On the other hand, the cost of postage is not included in the scale fee, and a charge may be made for this in addition to the scale charge. Similarly, the cost of telephone calls which may, at times, be heavy may also be charged. Fares and expenses to attend at a distance from the office to inspect deeds or to complete may also be included; and if, instead of making the journey himself, the solicitor chooses to employ and pay an agent, then it seems to follow that he may charge the agent's fee as a disbursement, provided that the fee does not exceed the normal cost of the journey.

Fees paid to mortgagees' solicitors and solicitors for other parties for production of deeds are, of course, proper disbursements; but not counsel's fees, where the counsel is employed to settle a document the solicitor's charges for drawing which are covered by the scale fee. If, however, the document is more than usually complicated, and the client's consent is obtained to counsel being employed to settle the document, then his fee may properly be charged as a disbursement.

A point of difficulty may arise here, upon which we have touched before, namely, how far, say, a mortgagor is liable for the disbursements incurred by a mortgagee where there is an agreement between the parties, either express or arising out of the normal practice, for the mortgagor to pay the mortgagee's costs. The question is not one upon which it is desirable to generalise, but if the employment of counsel by the mortgagee to advise on the title to the mortgaged property is reasonable, or if it is necessary and proper that any of the documents should be settled by counsel, then the mortgagor must bear the cost thereof; and this is so notwithstanding that he may not have been notified of the mortgagee's intention to employ counsel.

Whilst dealing with this matter of disbursements, whether in connection with conveyancing or in any other type of solicitor's work, attention may usefully be drawn at this stage to the provisions of R.S.C., Ord. 65, r. 27 (*29a*), which provides that in taxations under or pursuant to the Solicitors Act, 1932, no disbursements shall be allowed which have not been actually made before delivery of the bill of costs, unless the bill shall expressly state that they have not then been made, and shall set out such unpaid items of disbursements under a separate heading in the bill; in which case they may be allowed if they are actually made before the commencement of the proceedings in which the taxation takes place. In short, the solicitor is not to be allowed and paid sums which he has not in fact paid, and which he may not thereafter pay.

It is of interest to note at this juncture that it was held in an unreported case that if the disbursements were disallowed in a bill of costs under this rule, or rather under the decision in *Sadd* v. *Griffin* [1908] 2 K.B. 510, which gave rise to the rule, then they could not otherwise be recovered by the solicitor, but one may be forgiven if one doubts the validity of this decision.

There would seem to be nothing to prevent a solicitor who has had disbursements disallowed in a bill of costs by virtue of this rule from rendering a further bill of costs when the payments are actually made, although such a course would have obvious disadvantages. Moreover, it will be remembered that in cases where the one-sixth rule applies, and disbursements are disallowed, then such disallowance may have the effect of depriving the solicitor of the costs of drawing his bill of costs and attending the taxation (see R.S.C., Ord. 65, r. 27 (*38a*)). This rule, it will be recalled, applies where the bill of costs is payable out of a fund or estate, whether real or personal, or out of the assets of a company in liquidation, and the solicitor's charges and disbursements are reduced by a sixth part thereof.

The first question which one asks oneself is: "What does the rule mean by 'disbursements'"? The question was answered one hundred years ago, in connection with a similar provision in the Solicitors Act, 1843, in the case of *Re Remnant* (1849), 11 Beav. 603, where the principle was laid down that a solicitor's disbursements included those payments only which are made in pursuance of the professional duty undertaken by the solicitor, or payments which are sanctioned as professional payments by the established practice and custom of the profession.

This principle is not difficult to follow. Thus, court fees, normal counsel's fees, stamp duty on deeds, printers' charges and witnesses' expenses are all within the meaning of the word "disbursements"; but items such as estate duty, capital duty on the registration of a company, debts paid on behalf of clients and the costs of the adverse solicitors are not disbursements properly to be included in a solicitor's bill of costs. Normal counsel's fees are the fees incurred in the conduct of an action, but the solicitor should consult his client for instructions before paying heavy counsel's fees on a brief and before taking in more than one counsel. In many cases, the taking in of another counsel might be held to be reasonable, but it is unwise to adopt this course without specific instructions.

The question as to what are and what are not disbursements properly to be included in a solicitor's bill of costs may be a matter of some importance, as we have seen, where, for instance, the solicitor's bill is subject to the one-sixth rule.

J. L. R. R.

A Conveyancer's Diary

1949

FROM the point of view of the conveyancer and the practitioner in property law the year which has just closed has not been eventful. Only one or two of the decisions which appeared in the reports during 1949 broke new ground, and even the Legislature has left this branch of the law pretty much to itself, if the controversial measure abolishing restraints upon anticipation is disregarded.

Perhaps the most interesting feature of 1949 was the complete failure of the Town and Country Planning Act, 1947, to live up to the revolutionary character with which some writers had done their utmost to invest it on its first appearance. Of course, this Act, with its inky progeny of regulations and orders (how odious are those flimsy bits of paper, closely covered with scarcely legible and hardly more easily comprehensible type), has made its mark upon the practice of conveyancing. Preliminary inquiries have to be more extensive, and contracts for the sale of land, whether incorporating one or other of the well-known standard forms or " tailor made " for the occasion, nowadays almost always provide for a number of matters arising under the Act. Now and then some difficulties arise, such as in connection with a definition of the existing use of premises, but if any dispute does occur on questions of this kind it is almost always during the pre-contract stage, and common sense and the desire of the parties to strike a bargain are usually sufficiently strong to overcome any incipient inclination to make a test case out of the point at issue. That, at least, is my impression. I have only seen one case in which a purchaser's advisers attempted to insert covenants regarding existing use into the draft conveyance, and as the papers were not returned after the parties' preliminary skirmish, I can only think that on reconsideration it was found that the old ways are, after all, the best, and that forms of assurance which have been developed down the centuries are perfectly adequate to cover the additional restrictions imposed by this Act, at least until its provisions have been reviewed by the courts.

The abolition of legacy and succession duties by the Finance Act, 1949, will eventually lead to a considerable simplification of the law of death duties, but it will be many years before an acquaintance with the law regulating these two duties will be entirely obsolete. Provision for the payment of these duties otherwise than by the beneficiary has always been very common, and there must be thousands of settlements containing provisions to this effect subsisting at the present time. Any rejoicing at the passing of these duties may, therefore, well turn out to be premature. It is also a matter for regret that the loss which the Revenue will suffer as the result of the abolition of these duties has been made good by increasing the rates of estate duty—the harshest of all death duties from the point of view of the taxpayer, and the most artificial and complicated from the point of view of the lawyer. Even the complications involved in the method adopted by a previous Chancellor of the Exchequer for doubling the rates of the now defunct duties in the Finance Act, 1947, pale into insignificance when compared with the metaphysical subtleties which the courts have woven round s. 2 (1) of the Finance Act, 1894.

The legislative activity in this branch of the law has not been matched in the courts. *Re Shepherd* [1949] Ch. 116, dealing with the effect of a free-of-duty provision on the additional legacy duty imposed by the Act of 1947, is the only death duty decision of any general interest in the past year.

The Lands Tribunal set up by the Lands Tribunal Act, 1949, has this week been substituted for the authority prescribed under the Law of Property Act, 1925, as the tribunal for hearing applications for the removal or modification of restrictive covenants affecting land under s. 84 of that Act. More important than this change of tribunal is the probable effect of the Act in reversing, in effect, the decision in *Re* 108 *Lancaster Gate* [1933] Ch. 419, and thus allowing an appeal, within prescribed limits, from the tribunal in cases where the application has been dismissed by the tribunal as well as in cases where an application has been allowed.

The Access to the Countryside Act, 1949, is the last legislative measure of the year to affect the work of the conveyancer, but its force will not be felt for some time to come. A great deal of survey work will be necessary before the schemes which it envisages for the recording and extension of various rights of way can be put into effect by the authorities concerned.

As to the work of the courts, once again there has been practically no litigation of substance on the property legislation of 1925. *Re Wellsted* [1949] Ch. 296 seeks to define the powers of trustees for sale of land to invest in the purchase of land under s. 28 of the Law of Property Act, 1925, and certainly casts some light on that far from luminous provision. Read in conjunction with the earlier decision in *Re Wakeman* [1945] Ch. 177, the new decision forms an awkward code for trustees, and one which it is hoped will not escape the eye of the reformer when the long-awaited amending Act on matters arising out of the 1925 legislation comes to be drawn.

Two decisions, those in *Cannon* v. *Hartley* and *Whiteside* v. *Whiteside* [1949] Ch. 213 and 448, deal with the question of voluntary covenants, their enforceability and rectification. The latter underlines the difficulty of obtaining rectification of a voluntary covenant for the payment of money where the object of the covenant and of the action is not to benefit the beneficiary, but to obtain some alleviation of the burden of taxation for the covenantor. *Re Hambro* [1949] Ch. 111 and 348 (C.A.) looked as if it were going to break new ground in connection with an out of the way branch of the law relating to powers of appointment, but rather disappointingly the Court of Appeal decided the point at issue without laying down anything like a new principle, or even an extension into a new field of an old one. *Dudley & District Benefit Building Society* v. *Emerson* [1949] Ch. 707 decided the important point that a mortgagor whose statutory powers of leasing have been excluded cannot create a contractual tenancy in favour of a third party which will bind the mortgagees under or by virtue of the Rent Restriction Acts, and *Re Kellner* [1949] Ch. 509 (subsequently reversed on appeal: 93 SOL. J. 710), a decision on the effect of the National Health Service Act, 1946, on gifts to hospitals, will be too fresh in my readers' minds to require further comment here.

These are all valuable and interesting decisions within their fairly narrow limits. The speech of Lord Simonds in *Gilmour* v. *Coats* [1949] A.C. 426 is much more than that, and will be quoted and considered whenever the question of what constitutes a good charitable gift, in its widest aspects, comes up for decision; it is as sure of a place among the classic judgments on this topic as that of Lord Macnaghten in *Pemsel's* case [1891] A.C. 591. I do not think that there has been any other judgment possessing this quality, on any topic of the law falling within the scope of the property lawyer, recorded in the books of the past year.

" A B C "

Landlord and Tenant Notebook

HOUSING ACT ORDERS: RELEVANT CONSIDERATIONS

WHEN the local council takes an interest in demised property either *qua* housing authority under the Housing Act, 1936, or *qua* sanitary authority under the Public Health Act, 1936, it may be a delicate question whether the interests of landlord and tenant accord or conflict. Such a question had not, as far as the report goes, arisen in the case of *Bacon* v. *Grimsby Corporation* (1949), 93 SOL. J. 742 (C.A.), but the germs were present. The appeal was from a county court decision dismissing an appeal, under s. 15 of the Housing Act, 1936, against notices under s. 9.

Three points, one of them " possibly " (as Somervell, L.J., said) covered by authority, were raised in that case. The facts were that the appellant, agent in control of a number of houses let by his principals, the ground lessees, on weekly tenancies, had been called upon to repair them, as being unfit for human habitation, under the Housing Act, 1936, s. 9 (1). It so happened that the respondent corporation were also the ground landlords, and as such had previously served notices under the Leasehold Property (Repairs) Act, 1938, which, the rateable values being less than £100, had to all intents and purposes been nullified by counter-notices claiming the benefit of that Act. Probably this (and possibly the appellant's name) suggested an allegation, referred to by Denning, L.J., that the respondents had been influenced by extraneous considerations; but the allegation was not made good. The substantial complaints were that, granted that the houses were unfit, the respondents had not, as subs. (3) of the section directed, had regard to the estimated cost of the necessary works *and* the value which it was estimated the houses would have when they were completed, in that no estimate had been given; that " value " had been taken to mean value to the freeholders, and not value to the appellant's principals; that (in three cases) the county court judge had wrongly taken into account the probable fate of the houses if the repairs were not done, which fate would be demolition and consequently disappearance as rent-producing assets.

The first subsection of s. 9 of the Housing Act, 1936, authorises a council to serve notices on the person having control of a house requiring the recipient to execute specified works when a house is in any respect unfit for habitation; this " upon consideration of an official representation, or a report from any of their officers," and " unless they, the local authority, are satisfied that it is not capable at a reasonable expense of being rendered so fit." The next subsection authorises service of copies on other parties interested. Subsection (3) provides that, for the purposes of that Part of the Act (Pt. II), in determining whether a house can be rendered fit, etc., at a reasonable expense, regard shall be had to the estimated cost of the necessary works and to the value which it is estimated the house will have when the works are completed. The fourth and last subsection merely makes the rent collector the person having control. Section 10 deals with enforcement, and then comes s. 11 authorising demolition orders when a house is unfit for human habitation and not capable of being rendered fit at a reasonable expense. This section is also within Pt. II. A right of appeal to the county court is given by s. 15.

The respondents' sanitary inspector had set the ball rolling in the recent case by reporting to their sanitary sub-committee, which reported to the health sub-committee, which reported to the full council. The inspector gave evidence in the county court stating that he had not given estimates, but had made a general report that the repairs could be done at a reasonable cost. The Court of Appeal took the appellant's complaint to mean that unless detailed estimates showing the individual items of repair necessary were submitted the corporation could not " have regard to " the estimated cost. It held that, apart from anything else, *Cohen* v. *West Ham Corporation* [1933] Ch. 814 (C.A.) decided the point. In that case it was sought to impugn notices without recourse to the county court, and the substantial argument was not so much that detailed estimates had not been given as that a resolution to serve notices had been passed without any critical examination of the recommendation made, in that case, by the medical officer. But in his judgment Lord Hanworth, M.R., said: " That word ' regard ' is intended to be a loose and indefinite term, and I think it enables the local authority to take into account not merely an accurate estimate made by a surveyor or an estate agent with a schedule of dilapidations, but to take into account what would probably be the cost of the outlay required, and to consider whether, after that outlay has been incurred, it would be possible to let the house and get a return for the total expenditure upon the premises." It was held that this applied, despite the different circumstances, and that the submission of detailed estimates was therefore not a condition precedent to the serving of a notice under s. 9 (1).

On this point, I would respectfully submit that there is some ground for suggesting a *via media*. It is one thing for a council to consider a report on the lines of a schedule of dilapidations, giving the estimated cost of each item, whether it be the replacement of a sashcord, the repair of a kitchen range, the shoring-up of a whole wall, or what; it is another thing for a council to consider a report which merely says that repairs necessary to make a house fit can be done at a reasonable cost. There is a third possibility: some estimate, other than a detailed or precise one, could be given. It is true that this point was not put forward in *Cohen* v. *West Ham Corporation*, *supra*, and it can hardly be suggested that that authority did not sufficiently cover the position that arose in *Bacon* v. *Grimsby Corporation*, *supra*, unless a distinction is to be drawn between being satisfied " upon consideration of an official representation " (i.e., that of the medical officer, according to s. 188 (1) of the present Act), which is governed by a special section (*ibid.*, s. 154) that may be said to recognise the value of his opinion, and " upon consideration of a report from any of their officers " which is not so dealt with.

There was no authority on the next point, in which it was contended that the court ought to consider the value of the house to the leaseholders. In some cases less than two years of the head term remained, and it would, it was urged, be a hardship on a lessee to have to spend some £30 to £50 on a cottage in which his interest was so slight. The decision on this point was made essentially by reference to the wording of the enactment, or rather to what it does not contain; if it had been intended that the council should have regard to the value to the particular lessee, to how much was left of the lease, and possibly to the covenants therein, this would have been made plain. Before coming to this, however, Somervell, L.J., had observed that in most leases a lessee was bound to do repairs and to deliver up in good condition. In which connection attention might be drawn to the provision which concludes the above-mentioned enforcement section, s. 10; by subs. (7) no action taken

under s. 9 or s. 19 is to prejudice or affect any remedy available to the tenant of a house against his landlord. This is probably designed primarily for the protection of persons in the position of the weekly tenants rather than for those in the position of the ground lessees in the recent case; but if the head lease should oblige the ground landlords to repair, the lessees' remedy is expressly saved. On the other hand, s. 19 (2) saves remedies available to lessors; and the right to apply for a determination or variation of a lease (as the county court judge thinks fit, and possibly on such terms as he thinks just and equitable), to be found in s. 160, does not arise in the case of an order under s. 9 but only when either a demolition order or a clearance order is made.

The third point was exemplified by a case in which, accepting the appellant's evidence, it was found that in all £64 would have to be spent, but, the house being worth £41 and no increase being permissible, the yield of £8 or £9 a year would be the same. It was argued that this made the expenditure unreasonable, but the court held that the fact that no rent at all would be obtainable if the repairs should not be done made it, as the county court judge had put it, "impossible to say that such expenditure was not a reasonable proposition."

R. B.

PRACTICAL CONVEYANCING—I

Protection of Purchaser on Planning Matters

Two cases have recently been reported in the *Estates Gazette* which, although they do not involve any novel points of law, provide excellent illustrations of the way in which purchasers can be protected from the danger of planning restrictions which would limit the use of the land. In *Smith and Olley* v. *Townsend* (*Estates Gazette*, 29th October, 1949, p. 375), the plaintiff agreed to purchase property "subject to answers to preliminary inquiries and subject to searches." It was found that the property was in an area which the local planning authority proposed to zone as residential, and the plaintiff intended to use it for business purposes. Roxburgh, J., decided that the effect of the contract might be either (1) that the condition was void for uncertainty and so there was no valid contract, or (2) that the contract was subject to such searches as would satisfy a reasonable person. In any case he decided that the plaintiff was entitled to a declaration that there was no binding contract. The decision is a convenient one to solicitors who often wish to settle the terms of purchase subject to searches and inquiries which take a few days to make and which, in most cases, are likely to prove formalities only.

Very similar circumstances occurred in *Hawkwood Estate* v. *Walker* (*Estates Gazette*, 5th November, 1949, p. 400). There the contract provided that in the event of the local planning authority refusing to consent to the use of the land for industrial purposes "this agreement shall become null and void and the deposit returned without interest to the purchasers." The consent was not obtained and the purchasers recovered the deposit. Once more the action taken to protect the purchasers was held to be effective; where the purchaser proposes to change the use of land and he does not want to buy unless he can do so, such a provision should be inserted. It may be noted that the condition operated if consent was refused and this wording is much better than wording which is often used in such cases. The writer has seen conditions which avoid the contract, for instance, "if the land is zoned for residential purposes," or "if business use is contrary to a planning scheme or development plan." The right to use the land is dependent on the permission of the local planning authority and the contents of schemes or development plans are nothing more than a guide as to whether permission is likely to be given. Consequently the condition should, as in the case under discussion, refer directly to the grant of permission.

These two cases seem to suggest that solicitors are dealing effectively with the difficulties arising in conveyancing practice out of the Town and Country Planning Act, 1947. It is much too early to form a firm opinion of the effect of this Act in this, as in other, respects, but perhaps, after all, there is something to be said for the way the Act was drafted. Broadly, the effect was to neglect the implications of the Act on real property law and conveyancing practice, and perhaps the good sense of the profession may enable the most convenient practical arrangements to be made.

A Point of Construction

Lawyers claim to be precise in use of language and inevitably they look for precision from others. One is left to wonder, however, whether the result is sometimes to do an injustice by construing in an exact sense words which were obviously not intended to be so construed. To look to the intention of the parties is dangerous and so the law will not normally do so, but one occasionally feels that it might be advisable to adopt a broad construction of words used before the parties knew the exact circumstances to which they might apply. These thoughts arise on a perusal of the report, in the *Estates Gazette* of 10th December, 1949, at p. 523, of the case of *Provincial Cinematograph Theatres, Ltd.* v. *Campbell*. The question before the Court of Appeal arose out of a provision in the contract that "if prior to the actual date of completion the land . . . shall be . . . compulsorily acquired . . . or notice of any such intended . . . acquisition shall have been given, then the vendor shall . . . give notice to the purchasers." A notice from the local authority was received by the vendor stating that application had been "made to Parliament for an Act to authorise the corporation to acquire land" and that the land in question would be liable to be acquired compulsorily under the intended Act. The question was whether such notice fell within the terms of the contract. The Court of Appeal decided that the notice was intended only to give the recipient an opportunity of opposing the Bill. It did not state that the corporation would exercise powers of acquisition if they were obtained. Consequently, the court decided that there was no breach of contract. In strict legal logic the decision was undoubtedly right, but the writer feels much sympathy for the argument of Sir Andrew Clark, K.C., for the appellant, which is stated in the *Estates Gazette* in the following words: "Sir Andrew Clark submitted that the clause in the contract on which the dispute turned had to be read as an ordinary reasonable man would read it. The same applied to the notice which, he said, made it clear that the corporation were intending to acquire not only land generally but land in a schedule which specifically mentioned the corner plot in question." The writer ventures to suggest that most solicitors will consider that the decision of the Court of Appeal was too strict. Local authorities do not take powers of compulsory acquisition over land unless they intend to use them. If it was necessary or customary to serve a formal notice of intended acquisition one could understand a construction of the contract limiting its application to such a notice. As it is not usual to give any formal notice the parties must have intended the clause to cover an informal notification even if it did not expressly mention intended compulsory acquisition. Surely there is no doubt but that, if asked at the time of the contract, the parties would have answered that they intended the clause to refer to a notice such as that given by the local authority.

J. G. S.

HERE AND THERE

INTER-TERM EBB

FOR the first number of 1950 I write on New Year's Day, so once again a happy New Year to all our readers, though by the time they get the wish the Twelve Days of Christmas will be past. It is ebb tide between the terms and in the vacation, says Rosalind, Time stays still with the lawyers, "for they sleep between term and term and then they perceive not how Time moves." So until St. Hilary awakes them let's see what odds and ends were left lying about while Michaelmas Term was running its course. Sir Arthur Comyns Carr, K.C., at any rate will be glad to be done with the business of fighting Field-Marshal von Manstein's battles over again with rather special tactical difficulties arising out of the conduct of hostilities on the Hamburg terrain. After all that on top of his long Japanese exile, dedicated to the discouragement of war crime in the Far East, he has earned the friendly familiar quiet of twelve months as Treasurer of Gray's Inn, to which office he has been elected for 1950. Another battlefield—a pleasing episode in the battle of the dollar gap; the Commander-in-Chief, Sir Stafford Cripps, in an unfamiliar setting, welcoming home ("your real home is in our hearts") from a triumphant spell of overseas service one of his *corps d'élite*, the Corps de Ballet of Sadlers Wells returning laden with the spoils of the United States. Not for them the inglorious obscurity of mere "invisible exports," least of all for the brightest star of them all, Miss Moira Shearer. Connoisseurs and "fans," whether in the walks of law, politics or the ballet, will surely long treasure that double "pin-up" Press photograph with the heroine of the occasion smiling with modest discretion beside the guardian genius of the Exchequer, his hand outstretched to the company and the camera in expressive gesture almost as if the spirit of Terpsichore were stirring in him too. Interesting, incidentally, how many lawyers would, if they could, abandon that proverbially jealous mistress, the Law, to seek the more sympathetic bosom of the Arts. Only last month the Hardwicke Society meeting in Lincoln's Inn Hall decided by 164 votes to 38 that they would rather have written Gray's Elegy than Halsbury's Laws of England.

NO COMMENT

ONE supposes that such legislative excrescences as the Defence (Sale of Food) Regulations rank as laws and accordingly concern lawyers, so here is a little tale without comment. A firm of Bristol wine importers applied to register as a trade mark a label with the words "Bristol Milk" in relation to the famous sherry of that name. The Food Standards and Labelling Division of the Ministry of Food replied that it might contravene reg. 1 of the regulations, making it an offence to "mislead as to the nature, substance or quality of a food or in particular as to its nutritional or dietary value." The term, said the Man at the Ministry, indicated "the presence of milk and as such suggested that the wine had certain special nutritive qualities." The firm replied that the term had been used for over three centuries for a special type of sherry shipped to Bristol and "no one but an imbecile would connect the sherry with the product of a cow," adding: "Presumably if the Ministry takes exception to this term they would also object to our other brand, 'Bristol Cream,' on the same grounds, and as a result to all shaving creams, hair creams, face creams, boot creams, etc., as suggesting they have a nutritious value. We have an export trade for these two brands of sherry in America and Canada alone amounting to approximately 500,000 dollars a year. We feel we should have the backing of the Treasury in resisting any attempt to make us change the names of these brands, which would certainly have an adverse effect on sales." Ministry reply: "I can appreciate that you have used both descriptions for a number of years but these names were introduced before the Defence (Sale of Foods) Regulations came into force, and usage does not necessarily make them free from objection under the present law. I ought, perhaps, to make it clear that I am discussing regulations pertaining to the sale of food only and therefore your examples of shaving cream, hair cream, etc., could not seriously be considered as altering the circumstances in any way." A Ministry spokesman later said that the objection had been withdrawn. So let us sing, with G. K. Chesterton:

> "No more the milk of cows
> Shall pollute my private house
> Than the milk of the wild mares of the barbarian;
> I will stick to port and sherry
> For they are so very, very
> So very, very, very vegetarian."

Another story without comment: A man named Hobbs was found guilty of a serious crime of violence and sentenced to seven years' penal servitude. In little more than a year he was at Leyhill prison-without-bars. He walked out, broke into a house and attacked the occupant, his wife and daughter with an iron bar. The householder was ten weeks in hospital with a broken skull. The Home Secretary said in the Commons: "The selection of Hobbs was particularly unfortunate." The legal advisers of the injured parties are reported to be considering action against the Home Office. Query: Does the rule in *Rylands* v. *Fletcher* apply to such a case?

HOLIDAY TASK

HERE is a vacation problem for international lawyers culled from the columns of the daily Press. A vice-consul in a Mediterranean town sent the following query to the Foreign Office: "Is the illegitimate child of an Englishwoman and a Greek father, born in a yacht in French territorial waters but registered in Yugo-Slavia, *ipso facto* a British subject?"

RICHARD ROE.

OBITUARY

MR. B. D. CASTLEMAN

Mr. Barrie Douglas Castleman, solicitor, of Plymouth, died recently at the age of 33. He was admitted in 1937.

LT.-COL. G. P. CLARKE

Lt.-Col. Geoffrey Peard Clarke, M.C., coroner for West Somerset since 1927, died on 28th December, aged 54. He was Hon. Secretary and Treasurer of Somerset Law Society, of which he was President in 1947–48. He was admitted in 1920.

MR. W. GAMBLE

Mr. Walter Gamble, solicitor, of Mansfield, died on 18th December, aged 76. He was admitted in 1905.

MR. E. HART

Mr. Edwin Hart, solicitor, of Messrs. Budd, Hart & Son, of London, W.C.1, died at Lymington on 24th December, aged 86. He was admitted in 1886.

MR. H. W. D. KNIGHT

Mr. Henry William Denny Knight, solicitor, of Hornchurch, died on 26th December, aged 83. He was admitted in 1905.

LT.-COL. L. M. TAYLOR

Lt.-Col. Leonard Mainwaring Taylor, D.S.O., M.C., solicitor, of the Treasury Solicitor's Department, died on 19th December, aged 68. He was admitted in 1910.

NEW YEAR LEGAL HONOURS

KNIGHTS BACHELOR

Mr. Robert Henry Adcock, C.B.E., Clerk of the Lancashire County Council. Admitted 1923.

Mr. Leslie Stuart Brass, C.B.E., Legal Adviser, Home Office. Called by the Inner Temple, 1920.

Mr. Alexander Howat Johnstone, O.B.E., K.C., Vice-President of the New Zealand Law Society for many years.

Mr. Horace Alvarez de Courcy Pereira, Senior Registrar, Principal Probate Registry. Called by the Inner Temple, 1903.

Judge John Seymour Blake-Reed, lately senior British judge of the Egyptian Mixed Court of Appeal. Called by Gray's Inn, 1907.

Mr. Alan Edward Percival Rose, K.C., Attorney-General, Ceylon. Called by the Inner Temple, 1923.

Mr. Newnham Arthur Worley, Chief Justice, British Guiana. Called by the Inner Temple, 1933.

ORDER OF THE BATH

C.B.

Colonel Douglas Stevenson Branson, D.S.O., M.C., T.D., Chairman, Territorial and Auxiliary Forces Association, West Riding of Yorkshire. Admitted 1920.

Mr. Frank Alfred Enever, M.C., LL.D., Principal Assistant Solicitor, office of H.M. Procurator-General and Treasury Solicitor. Called by Gray's Inn, 1921.

ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

The Hon. Sir Robert James Hudson, C.M.G., M.C., Chief Justice of Southern Rhodesia and Acting Governor on several occasions. Called by the Middle Temple, 1909.

C.M.G.

Mr. William Murray Graham, lately judge of the Mixed Court of Appeal, Egypt. Called by Lincoln's Inn, 1907.

ROYAL VICTORIAN ORDER

G.C.V.O.

The Right Hon. Boyd, Baron Merriman, O.B.E., LL.D., President of the Probate, Divorce and Admiralty Division.

Colonel Sir Henry Davies Foster MacGeagh, K.C.B., K.B.E., T.D., K.C., Treasurer of the Middle Temple. Called by the Middle Temple, 1906.

ORDER OF THE BRITISH EMPIRE

G.B.E.

Sir (Arthur) Malcolm Trustram Eve, Bt., M.C., T.D., K.C., lately Chairman, Central Land Board and War Damage Commission. Called by the Inner Temple, 1919.

C.B.E.

Mr. L. A. Abraham, Principal Clerk, Private Bill Office, House of Commons. Called by the Inner Temple, 1928.

Sir Ernest William Elsmie Holderness, Bt., Assistant Secretary, Home Office. Called by the Inner Temple, 1920.

Mr. Henry Lesser, O.B.E., Chairman, London Executive Council, National Health Service. Called by Gray's Inn, 1913.

Mr. H. C. Meysey-Thompson, Lord Chancellor's Legal Visitor in Lunacy. Called by the Inner Temple, 1907.

O.B.E.

Mr. R. P. Baulkwill, Chief Administrative Officer, Office of the Public Trustee. Admitted 1918.

Mr. P. V. Davies, Assistant Keeper, First Class, Public Record Office. Called by the Inner Temple, 1929.

Mr. A. D. Jaffe, Hon. Secretary-General, International Law Association. Called by the Inner Temple, 1906.

Mr. R. V. Johnson, Hon. Secretary, Caernarvonshire Branch, Forces Help Society. Admitted 1896.

M.B.E.

Mr. D. Boland, First Class Clerk, Supreme Court of Judicature.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of The Solicitors' Journal*]*

Whither Articles?

Sir,—Must not the principle in the new clause of the Justices of the Peace Bill involve the decline and fall of the system of articles? For if this year magistrates' clerks are to be excused from articles, will not town clerks apply next year for a similar privilege and then clerks to urban district councils and rural district councils, and so on?

The justification of articles was that in no other way could a practical knowledge of our professional work be secured. But if ten years' service without articles in a magistrates' clerk's office is to be accepted as a suitable alternative, why not accept a similar period on similar terms in a solicitor's office, for a clerk must gain more knowledge of law in a year in our offices than in an office of a magistrates' clerk where he will only see a narrow section of legal work.

Does this herald a new rule to be of general application—five years of articled service or ten years of unarticled service, and then examinations and admission?

I, for one, hope that a new outlook has come so that admission to the profession will depend on merit only, not on means, and that all who possess integrity, intelligence and industry will be able to qualify notwithstanding they lack those financial aids which to-day are usually necessary to secure articles.

A. Rawlence.

Croydon.

Bankers' Drafts

Sir,—We are interested in the ruling of The Law Society that a vendor's solicitor cannot be compelled to accept a banker's draft drawn in favour of the purchaser's solicitors and endorsed over to the vendor's solicitors and marked "Not negotiable."

But we wish that prominence had been given to a practice arising on completions which affects the country solicitors: it is that more often than not London solicitors complete either through post or by agents by tendering a draft on London; this takes four days to collect, and in a big matter involves the client in an appreciable loss of interest.

In our experience London solicitors continue to send these drafts on London in spite of specific requests for a draft on the local branch of their or their client's bank.

Warrington. Robert Davies & Co.

NOTES OF CASES

COURT OF APPEAL

INCOME TAX: COTTON: VALUE OF STOCK-IN-TRADE

Heather *v.* Asia Mill, Ltd.

Tucker, Singleton and Jenkins, L.JJ. 30th November, 1949

Appeal from Croom-Johnson, J. (*Ryan* v. *Asia Mill, Ltd.* (93 SOL. J. 497)).

The appellant company appealed against an assessment to income tax for the year ending 5th April, 1946, the amount of which depended on, *inter alia*, the value of the company's stock-in-trade in hand on 13th January, 1945. It was agreed that its value was to be assessed on the basis of its true cost to the company. The company were cotton spinners. During the year ending on that date they paid the Cotton Controller a sum of £55,087, which, it was agreed, was for income tax purposes deductible in computing their profits for the year in question. The question in dispute was whether the £55,087 should be taken into account in ascertaining the true cost of the stock-in-trade. From 1941 all cotton had to be bought from the Cotton Controller, who fixed day-to-day prices for the purchase of cotton and the margins to be added in ascertaining the selling prices of yarn. Under an arrangement made in August, 1942, spinners were urged to assist the Controller by buying cotton to the fullest extent of their storage space irrespective of their yarn orders in hand. In the event of a rise or fall in the general price of raw cotton they were to pay to or receive from the Controller sums depending on whether their positions were "long" or "short" at the time of the price variation. A spinner's position is "long" where he has bought a weight of cotton in excess of the weight of yarn which he has contracted to sell. The arrangement was explained to the company in a letter from the Controller. From 17th April, 1944, the prices of all types of cotton were increased by 4½d. a pound in respect of cotton bought before then and after 1st February, 1943. As the company's position on 15th April, 1944, was "long," £55,087 became due to the Controller from the company based on the weight of cotton to the extent of which the company's position was then "long." It was contended for the company that, as its cotton had been bought outright at fixed prices under contracts containing no provision for price adjustments in the event of subsequent changes in the prices of cotton, the cost of its stocks must be ascertained solely by reference to invoice prices paid; that the £55,087, calculated by reference to the company's cover position at the time of the general increase, did not represent an addition to the cost of the cotton; and that accordingly the £55,087 did not require to be treated as part of the true cost of the company's cotton stocks. It was contended for the Crown that the stock at the material date consisted of cotton for which in addition to the invoice price 4½d. a pound had been paid by the company to the Controller, so that the true cost of their cotton stocks to the company was the invoice price plus the additional 4½d. a pound. Having regard to the out-and-out purchase of the cotton under contracts containing no provision for price adjustment, and to their opinion that the £55,087 was paid pursuant to a commercial contract by reference to cover position, the Special Commissioners held that that sum should not be included in ascertaining the true cost of the company's stock-in-trade. They reduced the company's assessment accordingly. The Crown's appeal was allowed by Croom-Johnson, J., who held that the £55,087 was to be included. The company appealed.

TUCKER, L.J., said that the question had to be determined on principles of business accountancy. The company's own accountants had included the £55,087 as part of the cost of stock-in-trade, and the Inland Revenue accountant had agreed with that view in his evidence before the Special Commissioners. The question turned upon the true construction of the agreement, however, and on the effect of the particular arrangement into which the parties had entered. Its effect was that, in order to obtain the stocks of cotton bought since 17th April, 1944, the company had had to pay not only 4½d. a pound extra to the price previously ruling, but also 4½d. a pound on their "long" position as at that date. To that expenditure they were bound by contract as one of the conditions on which, so long as the agreement remained in force, they obtained their supplies. It seemed to him (his lordship) that that necessary expenditure was properly attributable to the cost of the stock at the end of the year, and that it was immaterial that some of that stock might have been bought in the open market before cotton control was imposed. The appeal failed.

SINGLETON and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Heyworth Talbot*, K.C., and *Borneman* (*Whitfield, Byrne & Dean*, for *J. Arnold Brierley & Robinson*, Oldham); *Sir Frank Soskice*, K.C. (S.-G.), and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: STANDARD RENT: RENT LESS THAN TWO-THIRDS OF RATEABLE VALUE

Woozley *v.* Woodhall-Smith

Evershed, M.R., Cohen and Asquith, L.JJ.
2nd December, 1949

Appeal from West London County Court.

A dwelling-house within the Rent Restriction Acts by rateable value was first let in 1937 by a lease expiring in 1965 and providing for a rent of £5 a year until 29th September, 1944, and thereafter at £65 a year. £5 a year was at all material times less than two-thirds of the rateable value. The respondent, that tenant's successor in title under the lease of 1937, in 1947 as landlord let the premises at £225 a year. In proceedings between the landlord and the appellant tenant for the determination of the standard rent, the question was whether it was £65 or £225 a year. The landlord contended that, as the rent payable on 1st September, 1939, was £5 a year, the effect of s. 12 (7) was that the tenancy of 1937 must be disregarded and that the premises must accordingly be taken as having been first let in 1944 at £225 a year, which, therefore, was the standard rent. The county court judge fixed the standard rent at £225 a year, and the tenant appealed. By s. 12 (1) (*a*) of the Increase of Rent, etc., Act, 1920, as amended by the Rent, etc., Act, 1939, "the expression 'standard rent' means the rent at which the dwelling-house was let on 1st September, 1939, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said 1st September, the rent at which it was first let. Provided that, in the case of any dwelling-house let at a progressive rent payable under a . . . lease, the maximum rent payable . . . shall be the standard rent." By s. 12 (7), "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that . . . tenancy . . . and . . . shall apply in respect of such dwelling-house as if no such tenancy . . . ever had existed." (*Cur. adv. vult.*)

ASQUITH, L.J., reading the judgment of the court, said that the words "the rent at which the dwelling-house was let on 1st September, 1939," in s. 12 (1) (*a*), meant, not what rent was *de facto* being paid or could be exacted in the latter part of 1939, but what rent was provided for under the contract of letting current on 1st September, 1939. The words "rent payable in respect of any tenancy" in s. 12 (7) were to be construed in the same way. The true construction of s. 12 (7) was that, whenever it was in fact found that, as an incident of the relationship of landlord and tenant with regard to any premises, the rent payable by the tenant was less than two-thirds of their rateable value, then for all purposes of the

Rent Restriction Acts that rent and that relationship were to be excluded from consideration, and the premises were not to be treated as being " let as a dwelling " ; but that exclusion was not operative for any longer time than that during which the conditions demanding it in fact existed. Assuming that the word " where " in s. 12 (7) meant " in cases in which," then, if " payable in respect of any tenancy " in the sub-section meant payable at the time when application was made to the court, the rent, whether £65 or £225 a year, exceeded two-thirds of the rateable value, the tenancy was not excluded from the Rent Restriction Acts by s. 2 (7), s. 12 (1) (*a*) applied to it, and the effect of s. 12 (1) (*a*), in view of the proviso, was that the standard rent was £65 a year. The word " payable " could not be construed as meaning payable as at 1st September, 1939 (when the rent was £5 a year, which would exclude the operation of the Acts), because of the words " in respect of the tenancy." On the true construction of both s. 12 (1) (*a*) and s. 12 (7), the rent payable in respect of it was not merely £5 a year, but a progressive rent increasing from £5 to £65 a year. On a fair reading of s. 12 (1) (*a*) and its proviso with s. 12 (7), the true construction of the proviso was that, in the case of any dwelling-house let at a progressive rent, the rent at which it was let on 1st September, 1939, should be taken to be the maximum rent payable under the tenancy and the latter should be the standard rent, and was accordingly £65 a year. " Where " might, however, be taken to mean not " in cases in which " but " if and so long as." That seemed to be the correct construction (see *per* Lord Uthwatt (*obiter*) in *Stone (J. & F.), Lighting & Radio, Ltd.* v. *Levitt* [1947] A.C. 218). In that event the rent payable on 1st September, 1939, must be taken as £5 a year. Nevertheless, the excluding effect of s. 12 (7) would come to an end when the rent rose to £65 on 29th September, 1944, under the lease of 1937. That lease at £65 a year would then be the first lease recognised by law as existing after 1st September, 1939, and, on that basis also, the standard rent was £65 a year. Appeal allowed.

APPEARANCES: *Beney*, K.C., and *Crispin* (*Raymond Pollard & Co.*) ; *Stranders* (*Stoneham & Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INVITOR AND INVITEE: " UNUSUAL DANGER "

Horton *v.* London Graving Dock Co., Ltd.

Tucker, Singleton and Jenkins, L.JJ. 21st December, 1949

Appeal from Lynskey, J. (93 SOL. J. 540 ; 65 T.L.R. 386).

The plaintiff, a boiler maker and electric riveter of great experience, was employed by sub-contractors of the defendant company on a trawler in the latter's wet dock. The workman, apart from his general experience, had been working on the ship for four months when an accident occurred to him in a part of the ship where he had been working for a month. The accident occurred through his foot slipping off an angle iron, part of the staging erected by the defendants, on which he had to step. He claimed damages against the defendants for negligence. Lynskey, J., dismissed his action, and he now appealed. (*Cur. adv. vult.*)

SINGLETON, L.J., reading the first judgment, said that, before Lynskey, J., the workman's case had been put on the footing of the duty owed by an invitor to an invitee. On the appeal it had been put on a wider basis, though the main argument was directed to showing that Lynskey, J., was wrong in his statement of the position on the assumption that the defendants were to be regarded as invitors and the workman as an invitee. On the question of invitor and invitee it was argued for the defendants that the expression " unusual danger," as used by Willes, J., in his statement of principle in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274, at p. 288, meant " unexpected by the plaintiff " ; and that if the danger were known to him it could not be unusual, and therefore that there could be no liability on the defendants. That argument had found favour with Lynskey, J. He (the lord justice) did not think that what was unexpected to the workman in the particular circumstances was in every case the test. " Unusual " meant the kind of thing which would not normally be expected. The danger from this staging was of a kind not usually encountered. A danger which was unusual did not become other than unusual merely because the person suing knew of it before his accident. Were it otherwise, notice of an unusual danger might of itself render the rule in *Indermaur* v. *Dames*, *supra*, wholly inapplicable, whereas notice was only an element to be considered. There being, on the judge's findings about the staging, evidence of neglect, it was a question of fact whether the notice given was sufficient to absolve the defendants from liability. The workman was employed to work on the staging, and no doubt he hoped that he would be able to do so safely. It was his duty to get on with the work, and he was entitled to rely on the promise of the defendants' charge hand that something would be done. Could it be said that " by notice or otherwise " reasonable care was taken, so that the defendants were relieved from liability ? In fact they had done nothing. He did not regard knowledge on the part of the workman as an answer to the claim unless it could be shown not only that he realised the nature of the risk, but also that he freely undertook it ; in other words, that the defence of *volenti non fit injuria* applied. That defence ought not to prevail against a workman who had complained but thought it right to get on with his work as best he could and as carefully as possible, especially if there had been a promise on behalf of the occupier to put the matter right. The other ground of the workman's claim was that the defendants were under a duty to exercise reasonable care with regard to the staging on which they knew he would be working. That seemed to him (his lordship) a much better way of putting the position than was the argument based on invitor and invitee. Applying the words of Lord Esher, the Master of the Rolls, in *Heaven* v. *Pender* (1883), 11 Q.B.D. 503, at p. 509, as explained by Lord Atkin in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 580, he (his lordship) considered that the defendants were under a duty to the workman to use ordinary care and skill in the erection of the staging, and that they had failed in the performance of that duty. He would allow the appeal.

TUCKER and JENKINS, L.JJ., read judgments in which they agreed that the appeal should be allowed. Judgment for the plaintiff for £275 damages.

APPEARANCES: *Edgedale*, K.C., and *C. J. A. Doughty* (*Shaen, Roscoe & Co.*) ; *Marven Everett* (*Carpenters*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

OFFENCE AGAINST EXCHANGE CONTROL ACT, 1947

Pickett *v.* Fesq

Lord Goddard, C.J., Croom-Johnson and Lynskey, JJ. 21st October, 1949

Case stated by Sussex justices.

The defendant, an elderly woman of irreproachable character, was caught attempting to embark at a British port with eighty-five £1 notes, contrary to s. 22 (1) of the Exchange Control Act, 1947, and s. 186 of the Customs Consolidation Act, 1876. Her object in seeking to take the money out of the country was to help a son, an engineering student in Italy in financial difficulties which were preventing the continuation of his studies. The defendant had suffered in health through ordeals at the hands of the Germans while imprisoned as a resident in Italy during the second world war. When the money was discovered among her effects she told the customs officer that she was aware that she might only take £5 with her, that she did not declare the money in excess of that sum because she knew that she would not be allowed to take it, and that it was " a matter of life and death " for her to take it to her on. The justices were of opinion that having

regard to the character, age, health and mental condition of the defendant and to the extenuating circumstances it was inexpedient to inflict any punishment and they accordingly dismissed the information under the Act of 1947. The prosecutor appealed.

LORD GODDARD, C.J., said that a deliberate offence against the Exchange Control Act, 1947, could not be treated as trivial. It was of the utmost importance to the country that it provisions should be observed. Circumstances entitling the defendant to sympathy were irrelevant in such a case. It was almost impossible to imagine circumstances justifying the treatment as trivial of an offence against the Act for which such very heavy penalties were imposed. The case must go back to the justices with a direction to convict and to impose a penalty which was not merely nominal.

CROOM-JOHNSON and LYNSKEY, JJ., agreed. Appeal allowed.

APPEARANCES: *H. L. Parker* (*Solicitor for Customs and Excise*). The defendant did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

UNDISCHARGED BANKRUPT: OBTAINING CREDIT

Osborn *v.* Barton

Lord Goddard, C.J., Lewis and Cassels, JJ.

18th December, 1949

Case stated by Bodmin justices.

The defendant, an undischarged bankrupt, advertised in a newspaper as being for sale parcels of fireworks and fancy goods and the advertisement contained the request " cash with order." A firm, who were not informed of the defendant's bankruptcy, sent him a cheque for £25 and duly received the goods ordered. They then sent a cheque for £100 for more of the goods. The defendant collected the proceeds of the cheque through his bank but did not send the goods. He was prosecuted for contravening s. 155 of the Bankruptcy Act, 1914, which provides that where an undischarged bankrupt " (*a*) . . . obtains credit to the extent of £10 or upwards from any person without informing that person that he is an undischarged bankrupt . . . he shall be guilty of a misdemeanour."

It was contended for the defendant that he had no case to answer because he had obtained property or money and not credit. It was contended for the prosecutor that the firm's cheque was a bill of exchange and represented credit at the drawer's bank on which credit the defendant could draw, and that the defendant had obtained credit for the period between receipt of the cheque and despatch of the goods. The justices accepted the defendant's contentions and dismissed the information. The prosecution appealed.

LORD GODDARD, C.J., said that, while the bankrupt might have been guilty of some other offence, he had not contravened that section. He clearly had not obtained " credit." Credit was a valuable thing obtained on the promise of the receiver to do something in future. The cheque here had been paid in consideration of immediate despatch of the goods. The defendant had collected the £100, but had failed to despatch the goods. If he was pretending to be carrying on an honest business but was not, and had fraudulent intent, he was perhaps guilty of obtaining money by false pretences; but he was not guilty of the offence charged, and the appeal failed.

LEWIS and CASSELS, JJ., agreed. Appeal dismissed.

APPEARANCES: *P. M. Wright* (*Tamplin, Joseph & Co.*, for *Hubbard, Rendell & King*, St. Austell); *R. H. T. Whitty* (*Joynson-Hicks & Co.*, for *I. Rosen & Co.*, Bodmin).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

INTERRUPTION OF FREE PASSAGE: CAR DOOR NEGLIGENTLY OPENED

Watson *v.* Lowe

Lord Goddard, C.J., Humphreys and Hilbery, JJ.

18th December, 1949

Case stated by Mr. Sykes, Leeds stipendiary magistrate.

The defendant, while sitting in the driving seat of a stationary motor-car, negligently opened the off-side door of the car, thereby knocking a cyclist off his machine. The magistrate dismissed a charge against him of contravening s. 78 of the Highway Act, 1835, by negligently interrupting the cyclist's passage, on the ground that in *Shears* v. *Matthews* (1948), 65 T.L.R. 194, the Divisional Court had held to have been rightly dismissed a charge on similar facts preferred against the defendant as being the driver of a motor lorry since his negligence, if any, was not connected with driving. The prosecutor appealed. By s. 78 of the Highway Act, 1835, " . . . if the driver of any carriage . . . on any part of a highway shall by negligence . . . cause any hurt or damage to any person . . . upon such highway . . . or if any person shall . . . by negligence . . . interrupt the free passage of any person . . . on any highway " he shall be liable to a penalty.

LORD GODDARD, C.J., said that the magistrate had misunderstood *Shears* v. *Matthews, supra*. The defendant here was guilty of the offence charged since he had been charged as a " person " under a different part of the section from that relating to offences by drivers under which part the defendant in *Shears* v. *Matthews, supra*, had been charged. The offence alleged here was an act of negligence not connected with driving, and the defendant had in fact committed such an act. The defendant should accordingly have been convicted.

HUMPHREYS and HILBERY, JJ., agreed. Appeal allowed.

APPEARANCES: *D. Karmel* (*Sharpe, Pritchard & Co.*, for the Town Clerk, Leeds); the defendant did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Adoption of Children (County Court) Rules, 1949. (S.I. 1949 No. 2396.)

Adoption of Children (Summary Jurisdiction) Rules, 1949. (S.I. 1949 No. 2397.)

Agriculture (Maximum Area of Pasture) (Scotland) Order, 1949. (S.I. 1949 No. 2371.)

Avon and Dorset River Board Constitution Order, 1949. (S.I. 1949 No. 2374.)

Bristol Avon River Board Constitution Order, 1949. (S.I. 1949 No. 2373.)

Coal Distribution (Restriction) (Amendment) Direction, 1949. (S.I. 1949 No. 2387.)

Coal Tar (Control and Prices of Products) (Revocation) Order, 1949. (S.I. 1949 No. 2380.)

Dressmaking and Women's Light Clothing Wages Council (Scotland) (Constitution) Order, 1949. (S.I. 1949 No. 2363.)

Dried Fruits Order, 1949. (S.I. 1949 No. 2366.)

Exchange Control (Payments) (China and Formosa) Order, 1949. (S.I. 1949 No. 2365.)

Export of Goods (Control) (Amendment No. 8) Order, 1949. (S.I. 1949 No. 2359.)

Hull and East Yorkshire River Board Constitution Order, 1949. (S.I. 1949 No. 2377.)

Import Duties (Exemptions) (No. 4) Order, 1949. (S.I. 1949 No. 2354.)

Import Duties (Consolidation) Order, 1949. (S.I. 1949 No. 2355).
Imported Deciduous Fruit (General Licence No. 2) Order, 1949. (S.I. 1949 No. 2386.)
Imported Hardwood Prices (Revocation) Order, 1949. (S.I. 1949 No. 2362.)
Isle of Wight River Board Constitution Order, 1949. (S.I. 1949 No. 2375.)
Local Government (Contributions to Association of District Councils) (Scotland) Regulations, 1949. (S.I. 1949 No. 2369.)
London—Carlisle—Glasgow—Inverness Trunk Road (Ecclefechan Diversion) Order, 1949. (S.I. 1949 No. 2347.)
London Traffic (Parking Places) (Amendment) (No. 8) Regulations, 1949. (S.I. 1949 No. 2370.)
London Traffic (Prescribed Routes) (No. 33) Regulations, 1949. (S.I. 1949 No. 2364.)
Medical Acts (Province of Saskatchewan) Order, 1949. (S.I. 1949 No. 2392.)
Motor Fuel (Control) (Amendment) Order, 1949. (S.I. 1949 No. 2379.)
Motor Spirit (Amendment) (No. 3) Regulations, 1949. (S.I. 1949 No. 2378.)
National Health Service (General Medical and Pharmaceutical Services) Amendment (No. 2) Regulations, 1949. (S.I. 1949 No. 2341.)
National Health Service (Travelling Allowances, etc.) Regulations, 1949. (S.I. 1949 No. 2340.)
National Health Service (Travelling Allowances, etc.) (Scotland) Regulations, 1949. (S.I. 1949 No. 2343.)
National Parks and Access to the Countryside (National Parks Commission) Regulations, 1949. (S.I. 1949 No. 2361.)
North of Twyning—North of Lydiate Ash Trunk Road Order, 1949. (S.I. 1949 No. 2360.)
Ottawa Agreements Order, 1949. (S.I. 1949 No. 2353.)
Planning Payments (War Damage) (Scotland) Regulations, 1949. (S.I. 1949 No. 2339.)
Rearing of Pheasants (Revocation of Prohibition) Order, 1949. (S.I. 1949 No. 2400.)
River Boards (Form of Transfer of Mortgages) Regulations, 1949. (S.I. 1949 No. 2384.)
River Boards (Sinking Funds, Rate of Accumulations) Regulations, 1949. (S.I. 1949 No. 2383.)
Safeguarding of Industries (Exemption) (No. 9) Order, 1949. (S.I. 1949 No. 2351.)
Safeguarding of Industries (Lists of Dutiable Goods) (Consolidation and Amendment) Order, 1949. (S.I. 1949 No. 2308.)
Safeguarding of Industries (Reduction of Rates) Order, 1949. (S.I. 1949 No. 2352.)
Severn River Board Constitution Order, 1949. (S.I. 1949 No. 2376.)
Somerset River Board Constitution Order, 1949. (S.I. 1949 No. 2372.)
Statutory Orders (Special Procedure) (Substitution) Order, 1949. (S.I. 1949 No. 2393.)
Stopping Up of Highways (Gloucestershire) (No. 3) Order, 1949. (S.I. 1949 No. 2408.)
Stopping Up of Highways (Kent) (No. 2) Order, 1949. (S.I. 1949 No. 2412.)
Sugar (Rationing) (No. 2) Order, 1949. (S.I. 1949 No. 2405.)

NOTES AND NEWS

Professional Announcement

Mr. LESLIE NORMAN WATTS, practising under the style of Messrs. Emmerson & Co., at Sandwich, Kent, and Mr. HERBERT SYDNEY BROWN, practising under the style of Messrs. Brown and Brown, at Deal, Kent, have amalgamated their practices as from 1st January, 1950, and are taking into partnership Mr. MICHAEL LESLIE WATTS, who has been associated with the Sandwich firm for some time. The amalgamated firm will practice at Deal and Sandwich under the style of " Emmerson, Brown & Brown."

Honours and Appointments

Mr. DAVID L. POLLOCK, M.A., a partner in Messrs. Freshfields, has been appointed a director of the Legal and General Assurance Society, Ltd., as from 1st January, 1950.

The Lord Chancellor has appointed Mr. WILLIAM JOHN WENTWORTH DICKINSON and Mr. LEONARD HENRY DOVETON HODGES, Joint Registrars of the Bristol, Wells and Weston-super-Mare county courts and Joint District Registrars in the District Registry of the High Court of Justice in Bristol, to be in addition Joint Registrars of the Thornbury county court, as from the 1st January, 1950, *vice* Mr. C. P. Taylor, who has retired.

The Lord Chancellor has appointed Mr. PHILIP GWYNNE JAMES, Registrar of the Hereford, Kington, Leominster and Ross county courts and District Registrar in the District Registry of the High Court of Justice in Hereford, to be in addition Registrar of the Craven Arms, Ludlow and Tenbury county courts as from the 1st January, 1950, *vice* Mr. F. Malan, who has retired.

Personal Notes

Dr. J. C. Ethell, M.A., LL.D., a member of the teaching staff of Salford Grammar School for twenty-nine years and before that a solicitor practising in Pendlebury, has recently retired.

Mr. A. H. Prest, chief clerk to the magistrates' clerk at Harrogate, on 31st December completed fifty years' service with Messrs. Raworth, Lomas-Walker, Butterworth and Wilkinson, solicitors, of Harrogate.

Miscellaneous

The Law Society announces that 324 candidates were successful in the Final Examination held on 7th, 8th and 9th November, 1949. A total of 518 candidates sat for the examination. The John Mackrell Prize was awarded to Mr. Hugh Dashwood Brown, who was articled to Sir Walter Leslie Farrer, K.C.V.O. At the Intermediate Examination, held on 10th and 11th November, 1949, two candidates were placed in the First Class and five in the First Class (Law Part only).

A special general meeting of The Law Society of Scotland was held in Edinburgh on 23rd December to consider the appointment of a committee to frame a legal aid scheme. The following resolution was proposed: " That the General Council of Solicitors in Scotland as Council of the Law Society of Scotland shall have all the powers which may be exercised by a Council elected by the Society under the provisions of the Solicitors (Scotland) Act, 1949, including power to appoint a committee for the purposes of subs. (3) of s. 8 of the Legal Aid (Scotland) Act, 1949, provided that the solicitor members of such committee shall be such as are practising in the Court of Session and Sheriff Court, and that not more than two-thirds of them shall be members of the Council." On a show of hands this motion was defeated by a large majority but on a poll being demanded the resolution was passed by 1,044 votes to 594.

THE SOLICITORS ACTS, 1932 to 1941

On the 15th December, 1949, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JONATHAN RHODES CLOUGH, of No. 33 Devonshire Street, Keighley, in the County of York, a penalty of £50, to be forfeit to His Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

SOCIETIES

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION announce that Mr. T. G. Lund, C.B.E., Secretary of The Law Society, will deliver a lecture on " The Legal Aid and Advice Act, 1949," on Wednesday, the 11th January, 1950, in The Niblett Hall, Temple, E.C.4. The chair will be taken by Mr. S. J. Fogden, the President of the Association, at 6.15 p.m. Tickets are available at the offices of the Association, Maltravers House, Arundel Street, Strand, W.C.2.

"THE SOLICITORS' JOURNAL"
Editorial, Publishing and Advertising Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.
Annual Subscription: £3 inclusive (payable yearly, half yearly or quarterly in advance).
Advertisements must be received first post Tuesday.
Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication)